POTOMAC ELECTRIC POWER COMPANY
1900 PENNSYLVANIA AVE., N. W.
WASHINGTON, D. C. 20068-0001
(202) 872-2520

MICHAEL J. BOLAND
ASSOCIATE COUNSEL

March 5, 1992

Regional Hearing Clerk (3RC00)
U. S. Environmental Protection Agency
Region III
841 Chestnut Street
Philadelphia, Pennsylvania 19107

Re: Docket No. RCRA-III-224

Dear Sir/Madam:

Enclosed please find Potomac Electric Power Company's (PEPCO) Answer, Request for a Hearing and Request for Settlement Conference in the above-referenced matter.

Also enclosed please find a copy of a closure plan in compliance with Paragraph 5 of the Compliance Order in the above-referenced matter.

Sincerely,

Michael J. Boland

Michael J. Boland

cc: Brian Nishitani, Esquire
Mr. Bruce P. Smith

Docket No. RCRA-III-224

In Re:

POTOMAC ELECTRIC POWER COMPANY
1900 Pennsylvania Avenue, N.W.
Washington, DC 20068

Answer of Potomac Electric Power Company

Counsel for
POTOMAC ELECTRIC POWER COMPANY
William T. Torgerson, Esquire
Michael J. Boland, Esquire
Potomac Electric Power Company
1900 Pennsylvania Avenue, N.W.
Washington, DC 20068
(202) 872-2520

Kenneth A. Rubin, Esquire
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, DC 20036
(202) 467-7140

Robert L. Collings, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 10103-6993
(215) 963-5503

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 CHESTNUT BUILDING
PHILADELPHIA, PENNSYLVANIA 19107

In Re:	)	Docket No. RCRA-III-224
	)	
Potomac Electric Power Company 1900 Pennsylvania Avenue, N.W. Washington, DC 20068	)	Answer and Request for Hearing
	)	
RESPONDENT	)	

Proceeding Under the Resource Conservation and Recovery Act

ANSWER

I. INTRODUCTION AND REQUEST FOR HEARING

The Potomac Electric Power Company (hereinafter referred to as "PEPCO"), submits this Answer in response to the Complaint in this docket dated February 4, 1992.

At the outset, PEPCO notes that the Complaint does not charge PEPCO with any current violation of any law or regulation. Rather, it relates to alleged infractions arising from questions of regulatory interpretation with regard to documentation and timing of shipments of materials designated as hazardous more than two years ago. Those issues were raised in 1989 by the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), and were resolved through the implementation of minor changes to PEPCO's Hazardous Substances handling procedures at that time. Moreover, there is no allegation that any harm was caused to the environment as a result of the infractions alleged in the Complaint.

PEPCO also vigorously disputes certain statements and characterizations made by EPA representatives on February 4, 1992 in a press release and public statements which preceded the issuance of the Complaint to PEPCO. PEPCO was lumped together in EPA's press release with 47 other companies throughout the entire country. In the press release, EPA repeatedly characterizes the targets of the civil enforcement actions announced in the press release as if they are all companies who recklessly and intentionally flout the requirements of hazardous waste disposal laws. The record in this proceeding will show, however, that PEPCO has not disregarded the requirements of the Resource Conservation and Recovery Act. To the contrary, PEPCO has developed a comprehensive program for dealing with materials covered, or even potentially covered, by the Act -- a program that goes well beyond the requirements of the law. EPA is also aware that PEPCO has by no means sought to operate outside of hazardous waste laws. On the contrary, PEPCO has a well-documented record of careful, comprehensive, and, if anything, overly cautious, efforts to fully comply with hazardous waste laws. Indeed, local enforcement authorities had previously inspected PEPCO's practices and procedures, the same practices and procedures which are the subject of the Complaint, and informed PEPCO that it was in full compliance with applicable regulations. Local enforcement authorities have also attended PEPCO's hazardous waste management training programs.

EPA's February 4 press release goes on to say that the purpose of the enforcement actions issued therewith is "to make sure that legitimate businesses have a level playing field by eliminating the competitive advantage illegal operators might have in not complying with environmental laws." PEPCO believes the record in this proceeding will demonstrate beyond a shadow of a

doubt that in EPA's division of the world into "legitimate businesses" on the one hand, and "illegal operators" on the other hand, PEPCO clearly falls into the "legitimate business" category. In fact, a major portion of the fine proposed by EPA in the Complaint is a result of PEPCO's careful and conservative actions in going beyond the requirements of the law to manifest and handle as hazardous certain office building wastes it could have legally thrown in the municipal trash.

PEPCO recognizes the importance of EPA's hazardous waste regulations, and those of the District of Columbia, and the states of Maryland and Virginia. In a vigorous, good faith and comprehensive effort to comply with all applicable laws and regulations relating to the handling of material designated as hazardous, PEPCO developed a comprehensive program to assure safe handling of the small amount of materials designated as hazardous that PEPCO generates in connection with its statutory mandate to assure an adequate supply of electricity in the Washington metropolitan area. PEPCO's hazardous waste management program includes comprehensive institutional chain-of-custody controls and totally enclosed steel and concrete accumulation areas which not only comply with, but exceed, applicable laws and EPA requirements in the protection provided.

EPA's Complaint makes clear that PEPCO has done nothing to harm the environment. At all times pertinent to the allegations, PEPCO's wastes were carefully and safely managed. The contents of the containers containing material designated as hazardous were fully described on all required documents. The documentation compliance allegations in the Complaint relate solely to disputes as to whether in prior years a few documents should have included additional designations as to final disposal sites, or statements

that the wastes were subject to EPA's land disposal restrictions ("LDR"). The wastes were accurately described at all times in documents that accompanied them, and they were all in fact carefully managed and disposed of in accordance with the LDR. That is, the solvents which rendered the wastes hazardous were either properly incinerated at an EPA RCRA-permitted facility (ENSCO, in Arkansas), or properly burned for energy recovery.

EPA should be praising PEPCO, not imposing a fine. For example, as explained in more detail in PEPCO's answer to specific allegations, two shipments of solvents, properly packaged in containers, were sent to an EPA permitted disposal facility in Arkansas, accompanied by a government-approved manifest form which identified the generator, the transporter, the type of waste and quantity and the destination. It appears from the Complaint that EPA alleges that PEPCO violated EPA's complicated hazardous waste regulations by failing to mention, in the manifest which accompanied this fully identified waste, that the waste was subject to a requirement that it be incinerated. All pertinent information was in the manifest, except that specific statement, the requirement for which had been included in the regulations only four months prior to the shipment. The waste was properly identified as a solvent; the disposal facility knew what that classification meant and knew what standards were applicable; and the waste was in fact properly incinerated in accordance with the applicable regulations. EPA proposes that PEPCO be fined $9,500 for each such alleged shipment violation because of the failure to include in the manifest just a few words saying things that the recipient in fact knew. PEPCO's procedures applicable to those shipments clearly protected the environment. There was, in fact, no harm to the environment. In these

circumstances, both the magnitude of the fines, and the polemical adverse publicity EPA has focused on its allegations, are entirely inappropriate.

Even more unfairly, a major portion ($218,500) of the $453,000 fine proposed in EPA's Complaint relates to allegations that PEPCO did not send LDR notifications to itself in connection with carefully tracked and manifested internal shipments of materials designated as hazardous. As is clearly permitted by EPA's regulations, PEPCO accumulates its wastes on a system-wide basis. This means that wastes generated at various PEPCO power plants and other operating locations are shipped by PEPCO, on PEPCO trucks, to a central PEPCO location to be staged for ultimate shipment to a licensed disposal facility (ENSCO, Inc.) When the accumulated wastes referred to in these complaint allegations were shipped to ENSCO, PEPCO included LDR notifications; but EPA proposes that PEPCO be fined $218,500 for failing to notify itself. PEPCO does not believe its internal shipment procedures violated EPA's rules in this regard; but if they did, the violations were clearly insignificant and of no actual or even potential harm to the environment; and hence the proposed fines are clearly grossly excessive.

PEPCO also believes that EPA's Complaint is based on a significant misunderstanding of PEPCO's operations, such that what may have appeared to EPA to be violations, in fact were not. In significant respects, PEPCO is being fined for doing a better job than is required by law -- and a better job of managing its wastes than virtually any of its neighbors in downtown Washington, D.C.

A substantial portion ($120,505) of the proposed $453,000 fine arises out of a voluntary practice followed by PEPCO of manifesting, and treating under its hazardous waste handling system, shipments of very small

quantities of office building wastes that otherwise could entirely lawfully have been thrown in the municipal trash (such as photocopying machine wastes, oily rags and related debris from painting and maintenance operations). Under EPA's regulations, such small quantities of wastes generated by an office building -- in this case, PEPCO's main offices at 1900 Pennsylvania Avenue -- are exempt from the hazardous waste regulatory program. EPA's Complaint alleges that PEPCO did not properly fill out all the pertinent items on manifests accompanying these few containers picked up from PEPCO's main office building and taken to a central transfer facility. Since PEPCO was not even required to manifest or specially handle these wastes in the first place, PEPCO should be applauded, not fined, for handling these wastes with greater care than was required by applicable law and regulations.

PEPCO believes that most office buildings dispose of similar wastes directly into municipal trash without any special handling or manifesting whatsoever. Does the US EPA, for example, fill out hazardous waste manifests or specially handle shipments of similar types of materials from its main office building in Washington, D.C? PEPCO suspects not. Does the District of Columbia government fill out such manifests or specially handle such wastes from its office buildings? PEPCO suspects not. PEPCO trusts the Government will be prepared to respond to questions regarding the handling of such wastes in discovery if and when this case goes to hearing, and PEPCO trusts that EPA will propose appropriate fines for all Government facilities which are shown to be in violation of the procedures regarding office building wastes which it contends PEPCO has violated.

In fact, it appears from the Complaint that EPA misunderstood the origin of some of these wastes. The Complaint incorrectly alleges one source

is PEPCO's Buzzard Point power plant facilities. In fact, the wastes in question in that allegation came from PEPCO's office building at 1900 Pennsylvania Avenue, N.W. which, for the reasons stated here and more fully set forth below, is exempt from the regulations. It is PEPCO's belief that contrary to the statement contained in the Press Release issued with great fanfare by EPA prior to service of the Complaint upon PEPCO, EPA did not even bother to inform, much less confer with, the District of Columbia regulatory authorities prior to issuing its Complaint. Had EPA done so, the District of Columbia authorities might have pointed out the error. The Complaint must therefore be withdrawn for failure to give prior notice.

These certainly are the types of factors EPA, an administrative law judge and ultimately the Federal Court should consider as mitigating circumstances in deciding whether any penalty whatsoever is appropriate in these circumstances. For example, just a few months ago, the United States Court of Appeals for the District of Columbia Circuit, when confronted with an EPA enforcement action seeking a penalty against a company accused of not complying with certain paperwork requirements involving hazardous substances, refused to impose a penalty because, while the company had improperly documented its operations, the final result was that the waste in question was in fact incinerated. Specifically, in Rollins Environmental Services (NJ), Inc. v. EPA, 937 F.2d 649, 33 ERC 1543 (D.C. Cir. July 5, 1991), the Court of Appeals, in reviewing a penalty sought by EPA in an administrative enforcement action, said:

> "in light of the ambiguity of the regulation, the nature of the actions taken by [the respondent], and the absence of deleterious consequences, we agree with the second ALJ (administrative law judge) that imposing a monetary penalty on [the respondent] would be without justification."

The bottom line in this case is the same. No harm has been done to the environment and the totality of PEPCO's compliance programs make it clear that no such harm could have occurred in connection with the violations herein alleged.

The allegations against PEPCO relate, at most, principally to issues of improper documentation and reasonable differences in interpretation of exceedingly complex regulatory requirements.

In light of the true nature of the alleged violations in this case, EPA's actions in connection with the issuance of the Complaint have been particularly egregious and harmful to PEPCO. EPA's February press release, issued prior to serving the Complaint on PEPCO and without any notice to PEPCO or the regulatory authorities in the District of Columbia, characterized a series of enforcement actions, in which this Complaint was included, as a "major nationwide campaign." Statements made in the press release and press conference, which were calculated to attract media and public attention, characterize the violations as "evading the nation's hazardous waste management system" and "disregard[ing] the requirements of the Resource Conservation and Recovery Act." While these characterizations may have been appropriate to other actions taken by EPA on February 4, they clearly are grossly inaccurate with regard to the Complaint against PEPCO. EPA failed to differentiate in its public statements between the various actions taken on February 4, and the failure to do so apparently was intended to, and in fact did, result in media and public attention which was inaccurate and damaging to PEPCO's reputation. By engaging in this unfair and polemical media activity in connection with the Complaint, EPA has already inflicted damage upon PEPCO which is totally out of proportion to the alleged violations. EPA should

either withdraw the Complaint in its entirely, or, at the very least, eliminate the penalties.

PEPCO requests a hearing, and also requests an informal conference with EPA Region III, to discuss and explain in further detail why it believes it has satisfied the pertinent regulatory requirements. PEPCO believes that the information to be presented will justify elimination of the penalty proposed in the Complaint. In the meantime, PEPCO has taken steps to assure that the actions requested by EPA in the order accompanying the Complaint have been, and will continue to be, implemented.

In specific response to the numbered paragraphs in EPA's Complaint, PEPCO states the following:

II. ANSWER TO THE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

¶ 1. This paragraph identifies PEPCO's incorporation status and that it is a person. Admitted.

¶ 2. This paragraph identifies certain PEPCO business locations. Admitted.

¶ 3. This paragraph states that PEPCO submitted a notification that it was handling certain hazardous wastes. Admitted.

¶ 4 to ¶ 44 identify various states in which PEPCO, for various facilities, submitted various documents to EPA, the District of Columbia Department of Consumer and Regulatory Affairs, the Virginia Department of Waste Management, or the Maryland Department of the Environment and the status of various facilities which PEPCO does not dispute. Admitted.

¶ 45. This is a brief summary of the requirements of 40 C.F.R. Part 268. The specific language of Part 268, as it appears in the Code of Federal Regulations, is admitted. Differences are denied.

¶ 46. This states that on November 20, 1989, DCRA conducted an inspection at the Benning Road facility and detected violations of the DCMR and the Federal Hazardous Waste Management Regulations. PEPCO admits that DCRA conducted an inspection on the specified date, and subsequently asserted certain violations to have been shown in the inspection. PEPCO also notes, however, that DCRA had, a short time previously, inspected the same facility and asserted no such violations. In a letter dated January 10, 1989, DCRA reported on what DCRA described as

> "a complete review of [PEPCO's] hazardous waste manifest files and the land ban notification certifications . . . after [a] a complete review of the aforementioned documents . . . ."

Following this inspection, which covered the exact same procedures and practices that were covered by the November, 1989 inspection, DCRA concluded that:

> "PEPCO stands in full compliance with the hazardous waste management regulations of the District of Columbia."

Accordingly, PEPCO denies any alleged violations which are the subject of EPA's complaint.

¶ 47. EPA states that on December 4, 1989, the DCRA issued a notice of violation. PEPCO admits that DCRA issued the notice, but does not admit to any violations alleged by EPA. PEPCO, nevertheless, immediately undertook measures to address DCRA's concerns; and subsequent inspections demonstrated that it had effectively done so.

¶ 48. EPA states that it sent PEPCO a letter requesting information. Admitted.

COUNT I

¶ 49. This paragraph simply states that ¶¶ 1-48 of the Complaint are incorporated herein by reference. Likewise, PEPCO incorporates its responses by reference.

¶ 50. This paragraph restates 40 C.F.R. § 268.7(a)(1). The specific language of this provision, as it appears in the Code of Federal Regulations, is admitted. Differences are denied.

¶ 51. This paragraph purports to provide a summary of 40 C.F.R. § 268.7(a)(2). The specific language of § 268.7(a)(2), as it appears in the Code of Federal Regulations, is admitted. Differences are denied.

¶ 52. EPA states that DCRA representatives determined that the respondent did not furnish written notifications to each treatment, storage or disposal facility receiving wastes from PEPCO facilities that its waste was "land disposal restricted (LDR) waste." PEPCO admits that on the two occasions specified by EPA it did not send an LDR notification to ENSCO, but under the totality of the circumstances PEPCO denies it violated the LDR program. The only outside treatment, storage, or disposal facility to which wastes referred to in the Complaint were shipped is ENSCO. Every shipment to ENSCO was accompanied by a proper hazardous waste manifest; every such manifest identified the precise waste by classification number. ENSCO is one of the few facilities in the United States permitted by EPA to dispose of such wastes, and ENSCO, at the time it received each shipment referred to in the Complaint, in fact knew the pertinent land disposal restriction for these wastes. The wastes were in fact properly handled by ENSCO. Two shipments referred to in the Complaint, made shortly after EPA's LDR notification regulations took effect, did not specifically include a specific statement

that the wastes, which were otherwise fully described, were subject to the land disposal restrictions and land disposal treatment standards.

¶ 53. EPA states that EPA requested copies of information from PEPCO regarding all written notifications and/or certifications which accompanied its hazardous waste shipments. PEPCO admits that EPA requested this information.

¶ 54. EPA states that PEPCO responded to its information request, and that EPA believes PEPCO's submissions did not include all the required written notifications for certain off-site shipments. PEPCO admits that it responded to EPA's request, but denies the allegation that it did not provide required notifications "for each and all of the off-site shipments of hazardous waste referred to in ¶ 55, ¶ 59, ¶ 63, ¶ 67, ¶ 71, and ¶ 75 below."

¶ 55. EPA states that PEPCO shipped LDR wastes from its Benning Road facility to its Morgantown facility on seven dates in 1988 and 1989. It is admitted that in some circumstances these waste codes could be subject to LDR; but as more fully explained in ¶¶ 56 and 57, these materials were to be, and in fact were, burned for energy recovery at Morgantown and are therefore not subject to land disposal restrictions.

¶ 56. EPA states that each shipment listed in ¶ 55 was subject to LDR restrictions. This is denied. Under 40 C.F.R. § 261.6(a)(2)(ii), hazardous waste burned for energy recovery in boilers and industrial furnaces was exempt from certain regulations with respect to the shipments on the dates shown in the Complaint. As the courts have instructed EPA on several occasions, the Resource Conservation and Recovery Act is designed to do just that -- encourage resource recovery. Burning hazardous waste for energy value in an electric utility's high temperature/high efficiency boilers is exactly

the type of activity Congress sought to encourage. Long after the dates of the shipments referred to in ¶ 55 of the Complaint, EPA published new regulations imposing additional controls on hazardous waste burned in boilers and industrial furnaces. These regulations were not published until February 21, 1991, at 56 Fed. Reg. 7208. The effective date of these regulations was not until August 21, 1991. In short, none of the shipments mentioned in ¶¶ 55 and 56 gave rise to the alleged violation, and indeed, PEPCO's careful program of tracking these wastes through both a manifest system and its own independent chain-of-custody procedure was more than required by law, reflecting PEPCO's careful and responsible management of hazardous wastes.

¶ 57. This allegation, once again, refers back to the shipments burned for resource recovery at Morgantown. EPA alleges that PEPCO violated the regulations by failing to provide a written notification that the waste was subject to the LDR. For the reasons explained in response to ¶ 55 and 56, PEPCO believes no such notification was required. Furthermore, and this would apply to the above paragraphs as well, under the Bevill Amendment 40 C.F.R. § 261.4(b)(4), electric utility ash is not a hazardous waste and is not subject to LDR. Accordingly, solvents sent to Morgantown for energy recovery do not generate hazardous waste residues subject to regulated land disposal, and thus, are exempt from LDR notification requirements.

COUNT II

¶ 58. EPA simply restates the allegations in ¶¶ 1-57, and PEPCO likewise restates its answers to those paragraphs.

¶ 59. This paragraph states that PEPCO sent two shipments of solvent from Benning Road to ENSCO, Inc., located in El Dorado, Arkansas.

ENSCO was one of the few facilities in the entire United States that had an EPA permit to incinerate other generators' hazardous waste for destruction. EPA encourages destruction of solvents by incineration, and this is exactly why PEPCO sent these materials to ENSCO. PEPCO admits this allegation.

¶ 60. EPA alleges that at the time of the shipments in ¶ 59, the LDR rules were applicable. It is admitted that at the time of those shipments, the LDR rules were in effect.

¶ 61. EPA acknowledges that PEPCO sent these wastes to a properly permitted facility, and EPA does not disagree that the wastes were properly destroyed; but this paragraph nonetheless alleges that in connection with these shipments, PEPCO failed to provide the required written notifications that the wastes were subject to requirements for incineration, i.e., by failing to provide the LDR notification on the manifests for the two shipments referred to in ¶ 59 above. PEPCO, now and for several years, has routinely included such LDR notifications with all manifested shipments of wastes to ENSCO; but PEPCO admits that for these two shipments -- the first of their kind made by PEPCO to ENSCO after the LDR notification regulations became effective -- the notification form was not included. These shipments took place in March 1987, only four months after the LDR rules took effect. During this time interval, there was much confusion about the LDR requirements -- indeed, even EPA officials have said on one occasion or another that the EPA RCRA regulations are extraordinarily complex, and no one at EPA understands the entire program. Moreover, given the certification that these wastes were in fact properly disposed of by ENSCO in compliance with federal laws and regulations shortly after they were received at ENSCO, it is clear that the violations alleged in this Complaint involve truly minor paperwork

discrepancies, and that the fine proposed in connection therewith is unnecessary, or at least grossly excessive.

COUNT III

¶ 62. This paragraph restates the allegations of ¶¶ 1-61, and PEPCO likewise restates its answers to those paragraphs.

¶ 63. EPA states that PEPCO sent two shipments of LDR wastes from the Buzzard Point facility to the Benning Road facility in 1989. This paragraph is denied in its entirety. The two manifests identified in ¶ 63, as set forth clearly in the manifests themselves, involved shipments of waste material from PEPCO's administrative offices located at 1900 Pennsylvania Avenue, N.W., Washington, D.C. They had no connection, whatsoever, to Buzzard Point.

¶ 64. This paragraph states that the wastes in ¶ 63 were subject to the LDR regulations. This allegation is denied. The wastes in question are typical office building waste materials that are eligible for the small quantity generator exemption. Indeed, if such small quantity office building wastes are subject to the full panoply of EPA's LDR Regulations, PEPCO submits that virtually every office building in the United States of America, including those occupied by EPA and other Federal Government agencies, are also in violation of these regulations. With regard to the wastes referred to in this paragraph, PEPCO is being pilloried for voluntarily doing more than is required by applicable laws and regulations, by separating at its office building, materials such as photocopy machine materials, paint rags, etc., and in effect, handling them as if they were hazardous wastes. PEPCO believes that most office buildings in Washington, D.C., indeed probably most federal office buildings, simply discard such materials with their municipal trash

collections. Certainly PEPCO should not be singled out and punitively penalized for voluntarily exercising more careful management of such wastes.

¶ 65. EPA states that PEPCO failed to provide the required LDR notifications in its manifests accompanying shipments described in ¶¶ 63 and 64. This absurd allegation is denied. No manifest at all was required with regard to these wastes. Just because PEPCO did more than required by preparing a manifest, it should not be penalized for failing to include an LDR notification with that voluntarily prepared manifest.

COUNT IV

¶ 66. EPA restates the allegations of ¶¶ 1-65, and PEPCO likewise restates its answers to those paragraphs.

¶ 67. EPA alleges that four shipments of hazardous wastes from PEPCO's Potomac River facility to its Benning Road facility took place on one date in 1988, and three dates in 1989. This is admitted.

¶ 68. EPA alleges that at the time the shipments in ¶ 67 were conducted, the LDR restrictions were applicable to F001, F003, F004, and F005. PEPCO admits LDR restrictions apply to F001, F003, F004, and F005; but, for the reasons set forth in ¶ 69, below, PEPCO denies any violation.

¶ 69. EPA alleges that PEPCO violated the regulations by failing to provide an LDR notification when manifesting shipments from one PEPCO location to another PEPCO location where the shipment was not for the purpose of treatment or disposal. This is denied. Three of these four shipments were ultimately sent, accompanied by the full LDR notification, to ENSCO for incineration, and were in fact incinerated by ENSCO. Prior to shipment to ENSCO, all of these shipments were carefully tracked by PEPCO, using both EPA manifests and an additional, independent PEPCO-developed chain-of-custody

tracking system. As long as these PEPCO-generated wastes were carefully managed within PEPCO's comprehensive hazardous waste management system, the applicability of the LDR did not need to be repeated in connection with each internal shipment.

The fourth shipment referred to in this paragraph, manifest No. PEPC890005, was solvent which was burned at Morgantown for energy recovery. For the reasons set forth in PEPCO's answer to ¶¶ 55 - 57, no LDR notification was required for this shipment to Morgantown.

COUNT V

¶ 70. This paragraph restates the allegations in ¶ 1 - 69, and PEPCO likewise restates its answers to those paragraphs.

¶ 71. This paragraph states that PEPCO made seven shipments of hazardous waste from Morgantown to Benning Road in 1988 and 1989. Admitted.

¶ 72. EPA alleges that at the time of the shipments in ¶ 71, the LDR restrictions applied to these categories. While PEPCO admits the LDR rules were in effect, for the reasons set forth in ¶ 73, PEPCO denies that they applied to these shipments.

¶ 73. EPA alleges that PEPCO failed to provide the required LDR written notifications with the manifests set forth in ¶ 71, all of which relate to internal shipments within PEPCO's comprehensive hazardous waste handling system. For the same reasons set forth in PEPCO's answer to ¶ 69, PEPCO denies that any violation took place. All the wastes listed in ¶ 71 were properly disposed. Manifest Numbers MDC0118257; MDC0118258; MDC0118262; and MDC0118266 were sent to ENSCO for incineration and destruction, each such shipment to ENSCO being accompanied by a separate manifest with the appropriate LDR notification. The remaining manifested shipments identified

in ¶ 71 were remanifested and sent back to Morgantown to be burned for energy recovery, and promote the purposes of the Resource Conservation and Recovery Act, and thus are exempt from the LDR rule.

COUNT VI

¶ 74. EPA restates the allegation of ¶¶ 1 - 73 and PEPCO likewise restates its answers to those paragraphs.

¶ 75. EPA identifies three shipments of hazardous wastes from the Chalk Point plant to Benning Road. Admitted.

¶ 76. EPA alleges that the LDR restrictions were applicable at the time of these shipments. See PEPCO's answer to ¶ 77 below. Denied.

¶ 77. EPA alleges that PEPCO failed to provide the required LDR written notification in connection with these internal shipments within PEPCO's comprehensive hazardous waste handling system. This is denied. Each of these shipments was ultimately sent from Benning Road to ENSCO with a separate manifest which included the appropriate LDR notification. As fully discussed in ¶ 69 above, shipments within PEPCO's comprehensive hazardous waste management system were carefully tracked and did not need an additional separate LDR notification.

COUNT VII

¶ 78. EPA restates the allegations in ¶¶ 1 - 77, and PEPCO likewise restates its answers to those paragraphs.

¶ 79. EPA alleges that the Virginia hazardous waste management regulations, § 5.03.06, like 40 C.F.R. § 262.20(b), provide that the generator shall identify on each manifest all subsequent transporters and the "designated facility". While the Complaint's reference to the text of the regulations is not exactly accurate, PEPCO admits that the regulations call

upon the generator to identify on each manifest all subsequent transporters and the "designated facility."

¶ 80. EPA refers to another VHWMR regulation, and 40 C.F.R. § 260.10, defining the term "designated facility." PEPCO admits that the regulations define these terms, but refers to the full text of the regulations for their precise definitions.

¶ 81. EPA alleges that on March 1, 1990, PEPCO submitted to the District of Columbia Department of Consumer and Regulatory Affairs a letter with copies of manifests for three shipments of wastes from the Potomac River facility to Benning Road. Admitted.

¶ 82. EPA states that PEPCO also supplied manifests for shipments of hazardous waste to Benning Road from the Potomac River facility in further response to requests from the DCRA. Admitted.

¶ 83. EPA alleges that the manifests referred to in ¶¶ 81 and 82 identifies the Benning Road facility as the "designated facility." Admitted.

¶ 84. EPA contends that the Benning Road facility is not a "designated facility" within the meaning of the VHWMR or EPA regulations (VHWMR § 2.42, and 40 C.F.R. § 260.10) because it does not have a permit or interim status. PEPCO does not challenge EPA's conclusion that the Benning Road facility does not have a permit or interim status; but PEPCO denies that the entry of Benning Road on § 9 of the manifest form is a violation because these internal shipment manifests were tied, through PEPCO's comprehensive written chain-of-custody system, into subsequent externally manifested shipments to ENSCO, which clearly is a "designated facility" and which were accompanied by the appropriate LDR notifications. Since each PEPCO internal manifest can be tracked through PEPCO's chain-of-custody process to a specific

subsequent manifest which designates the ultimate recipient either as a "designated facility" or as an exempt activity, the failure to do so on a single manifest rather than as two sequential manifests is insignificant and should not be considered as violating EPA's statutes or regulations. PEPCO internal manifest Nos. PEPC880003, PEPC890002, and PEPC890004 were all re-manifested and shipped to ENSCO under external manifest Nos.: AR378713, AR378713, AR380855, respectively.

PEPCO internal manifest PEPC880001 was sent to ENSCO under external manifest No. AR273468.

Finally, the waste covered by PEPCO internal manifest PEPC890005 was sent to Morgantown under internal manifest No. MDC0192878, and was burned for energy recovery. This is an exempt activity for the reasons set forth in ¶¶ 55-57 above.

¶ 85. EPA alleges that PEPCO violated VHWMR § 5.03.06 for failing to identify a designated facility on the manifest referred to in ¶¶ 81 and 82 above. For the reasons set forth in ¶ 84, above, this is denied. All PEPCO shipments from its various facilities were consolidated at Benning Road, and then each was shipped to an EPA permitted disposal facility, ENSCO. ENSCO was a designated facility. The intra-PEPCO shipments were carefully tracked under PEPCO's system, and PEPCO at all times knew the identity of the material.

COUNT VIII

¶ 86. EPA restates the allegations of ¶¶ 1 - 85, and PEPCO likewise restates its answers to those paragraphs.

¶ 87. This paragraph is similar to the allegation in ¶ 80, except that now EPA states the corresponding requirements under Maryland law that a generator shall designate on the manifest one facility which is permitted to

handle the wastes described on the manifest. PEPCO admits that Maryland imposes manifest requirements, and otherwise refers to the full text of the Maryland regulations for their precise language.

¶¶ 88 and 89. EPA identifies manifest numbers for shipments by PEPCO from its Morgantown facility to its Benning Road facility. The identity of these manifests is admitted.

¶ 90. This paragraph states, specifically, "the Benning Road facility does not have a permit or interim status to treat, store, or dispose of hazardous wastes as referenced in ¶¶ 8, 9, and 11 above." In brief, PEPCO admits that it does not have a permit or interim status for its facility at Benning Road. PEPCO operated Benning Road as a transfer facility. PEPCO thought that it benefitted from the provisions of 40 C.F.R. § 262.34 which would allow a generator to accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status. However, under 40 C.F.R. § 263.12, a transporter may store manifested shipments of hazardous waste at a transfer facility for a period of ten days or less without the need for a permit for interim status. The reason EPA promulgated the transfer facility rule was for the exact same reason that PEPCO employs it -- to facilitate the collection of relatively small amounts of wastes from various places, and to consolidate them into one larger shipment. This is precisely what PEPCO did. Thirteen of the shipments were sent out under a separate manifest number to ENSCO, which is clearly a designated facility. These manifests, and the corresponding manifests to ENSCO, are listed below.

Internal Manifest No.	External Manifest No.
MDC0118266	AR380855
MDC0118207	AR170196
MDC0118223	AR170196
MDC0118325	AR278519
MDC0118327	AR278519
MDC0118328	AR278519
MDC0118329	AR278519
MDC0118331	AR273468
MDC0118338	AR273468
MDC0118340	AR273468
MDC0118257	AR378712, AR391623
MDC0118258	AR378712
MDC0118262	AR378712, AR378713

The remaining three shipments to Benning Road were subsequently sent out, under separate manifests, to Morgantown where they were burned for energy recovery, an activity which is exempt for reasons set forth earlier in ¶¶ 55-57.

¶ 91. EPA contends that PEPCO violated COMAR § 10.51.03.04A(2) by failing to designate on the manifests a facility which was permitted to handle the wastes described in such manifests. This allegation is denied. Since each PEPCO internal manifest can be tracked through PEPCO's chain-of-custody process to a specific subsequent manifest which designates the ultimate recipient either as a "designated facility" or as an exempt activity, the failure to do so on a single manifest rather than as two sequential manifests is insignificant and should not be considered as violating EPA's statutes or regulations.

COUNT IX

¶ 92. EPA restates the allegations in ¶¶ 1 - 91, and PEPCO restates its answers to those paragraphs.

¶¶ 93 and 94. EPA identifies shipments from the Chalk Point facility to Benning Road. PEPCO admits these shipments took place on the dates indicated.

¶ 95. EPA states that Benning Road did not have a permit or interim status, but otherwise, ¶ 95 contains the same typographical error set forth in ¶ 90. PEPCO restates its answer to ¶ 90, which is equally applicable to ¶ 95, with respect to the corresponding allegations.

¶ 96. EPA contends that PEPCO violated COMAR § 10.51.03.04A(2) by failing to designate on the manifests a facility which was permitted to handle the wastes described in such manifests. This allegation is denied. All of the shipments mentioned here were manifested to ENSCO, a designated facility, under the corresponding manifest numbers, as follows:

Internal Manifest No.	External Manifest No.
MDC0118273	AR380855, AR380854
MDC0046955	AR096980
MDC0046957	AR104215
MDC0046956	AR104215
MDC0046958	AR104243
MDC0118185	AR263499
MDC0118192	AR278519
MDC0118348	AR273468
MDC0118350	AR273468
MDC0118270	AR378712

Since each PEPCO internal manifest can be tracked through PEPCO's chain-of-custody process to a specific subsequent manifest which designates the ultimate recipient either as a "designated facility" or as an exempt activity, the failure to do so on a single manifest rather than as two sequential manifests is insignificant and should not be considered as violating EPA's statutes or regulations.

COUNT X

¶ 97. EPA restates the allegations in ¶¶ 1 - 96 and PEPCO restates its answers to those paragraphs.

¶ 98. EPA states that 20 DCMR § 4003 provides that a generator must designate on the manifest a facility which is permitted to handle the wastes described on the manifest. This is admitted as to regulated wastes.

¶ 99. EPA identifies two shipments to the Benning Road facility from the Buzzard's Point facility. This is denied. As set forth earlier in the answer to ¶ 63, EPA has incorrectly referred to the Buzzard's Point facility. These wastes originated from the Thomas Edison Building, an office building.

¶ 100. This paragraph alleges that the Benning Road facility does not have a permit or interim status. It is admitted that the Benning Road facility does not have a permit or interim status.

¶ 101. EPA alleges that PEPCO violated 20 DCMR § 4003 by failing to designate on the manifests referenced in ¶ 99, a facility which is permitted to handle the wastes described on the manifest. This allegation is denied. This waste is eligible for the small quantity generator exemption, as explained earlier in ¶¶ 63 to 65. 20 DCMR § 4003 does not apply

COUNT XI

¶ 102. EPA restates its allegations in ¶¶ 1 - 101, and PEPCO restates its answers to those paragraphs.

¶ 103. EPA simply recites provisions of RCRA § 3005, and corresponding state laws, which require no response from PEPCO, except that we refer to the actual language of the pertinent statutes and regulations for their precise content.

¶ 104. EPA identifies at least seven shipments of F001 through F005 wastes which have been stored at Benning Road for a period of days ranging from 16 days to 268 days. PEPCO disagrees with EPA's calculation. In

particular, the reference to PEPCO manifests PEPT890003 and PEPT890004 are incorrect. Those shipments are exempt small quantity generator waste as described in ¶¶ 63 to 65. Therefore, at most, the total number of days of storage on-site would be 43 days, the longest number of days of storage on-site that does not benefit from the small quantity generator exemption.

¶ 105. This allegation states that PEPCO does not have a permit or interim status for its Benning Road facility. PEPCO admits that it does not have a permit or interim status for the Benning Road plant.

¶ 106. EPA alleges that PEPCO violated § 3005 of RCRA and 20 DCMR § 4001.1(b) and 4007.2(d)-(h) by storing seven shipments of hazardous waste on-site at the Benning Road facility without a permit or interim status. PEPCO denies this allegation. As explained above, two of the shipments, to which 268 of the days in noncompliance are attributed, were entirely exempt. PEPCO thought the remaining shipments benefitted from the provisions of 40 C.F.R. § 262.34 which would allow a generator to accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status. Finally, it should be emphasized that manifest PEPT890003 which corresponds to the longest number of days of presence on-site that does not benefit from the small quantity generator exemption, i.e., 43 days, involved only one drum of solvent debris (rags and clothing) and one drum of expired photocopy supplies.

The next allegation refers to manifest number PEPC890002 which is alleged to have remained on-site for 30 days. This manifest also corresponds to only one drum of solvent debris. Both drums were shipped out to ENSCO, a permitted facility, for incineration, on the same day, February 10, 1989.

III. COMPLIANCE ORDER

PEPCO acknowledges receipt of the compliance order and is in compliance with the terms of the order.

IV. THE CIVIL PENALTY ASSESSMENT SHOULD BE WITHDRAWN

EPA proposes the assessment of a civil penalty in the amount of $453,000. It is PEPCO's understanding that it is standard practice for EPA to identify a proposed penalty and then in subsequent negotiations as it learns more about the pertinent facts, to adjust the penalty to reflect additional information provided by the respondent. For the many reasons already set forth in this Answer, PEPCO believes that a penalty of the magnitude proposed by EPA is entirely inappropriate in these circumstances. The specifics of each count will be addressed below, followed by a more general discussion on the penalty assessment.

Count I to VI - EPA proposes a penalty of $9,500 per shipment for failure to provide LDR notification for each shipment. In Count I, EPA proposes $66,500 for seven shipments from Benning Road to the Morgantown facility. EPA goes on to state that failure to provide the receiving facilities written notifications that the waste is subject to the LDR rule makes it difficult or impossible for the receiving facility to identify the waste as LDR waste. Without this information, the receiving facility could engage in an improper treatment, storage, or disposal of the LDR waste. Of course, that is not the case here. Indeed, EPA admits this. EPA goes on to state:

> "In this case, however, it was likely that the treatment, storage and disposal facilities have been alerted to the fact that they were receiving and handling LDR wastes of a specific type since most shipments were intra-company shipments for which the respondent maintained a central tracking system."

Notwithstanding the recognition that PEPCO properly managed its wastes, knew exactly what it was handling, and used it in a manner to promote resource recovery or otherwise to ship it to permitted facilities that properly incinerated the material, EPA seeks a penalty of $9,500 for each manifest that did not have the LDR notice on it. A penalty of this magnitude is extraordinarily unfair. Moreover, as explained in PEPCO's Answer to ¶¶ 55, 56, and 57, the LDR did not apply to these shipments because resource recovery is exempt, and the Bevill Amendment exempts utility ash from the LDR program.

Accordingly, the penalty for Count 1 should be withdrawn in its entirety.

Count II - EPA seeks $9,500, each, for the failure to include the LDR notification on two shipments to ENSCO. This penalty is extraordinarily excessive. The manifest clearly identified the wastes in question by their F codes, ENSCO knew what it was receiving, and ENSCO properly disposed of the material. Accordingly, LDR notification in these circumstances would be superfluous; but in any event, PEPCO had routinely included these notifications with shipments taken to ENSCO since 1987. The inadvertent failure to include the LDR notifications for two shipments, within the first few months when the regulations took effect, caused no harm, and no penalty should be imposed.

Count III - EPA seeks a penalty of $9,500, each, for alleged shipments from Buzzard's Point to Benning Road without the LDR notification. As explained earlier in response to ¶ 63, there were no shipments from Buzzard's Point, but in fact, there were shipments from the Thomas Edison Building. These shipments are exempt under the small quantity generator rule, and there should be no penalty under this count for these shipments.

Count IV - This seeks a penalty of $9,500, each, for four shipments from Potomac River to Benning Road. These were intra-company shipments, which, through PEPCO's chain-of-custody documentation can be specifically traced to subsequent external shipments which were all properly manifested with the LDR notice for shipments to ENSCO. There should be no penalty for Count IV.

Count V - This seeks $9,500, each, for separate shipments from Morgantown to Benning Road. For the same reason expressed above as to Count IV, there should be no penalty here. From Benning Road, shipments to ENSCO were properly manifested with an LDR notification.

Count VI - This is the last in a series of allegations related to Count I in the beginning of the Complaint. This Count relates specifically to three shipments from Chalk Point to Benning Road. Again, these were intra-company shipments, accompanied by PEPCO's manifest and by PEPCO's careful chain-of-custody tracking system. Subsequent shipments were properly manifested with the LDR notification, for shipments to ENSCO. No penalty should be imposed.

Counts VII-X - These counts seek $500, each, for shipments from various PEPCO plants to its Benning Road facility because PEPCO allegedly failed to designate on each manifest a facility which was permitted to handle such wastes. Specifically, EPA alleges that PEPCO incorrectly listed the Benning Road plant as a designated facility on 33 manifests. At the same time, however, EPA concedes that PEPCO has

> "implemented an internal manual waste tracking system for the facilities that does not meet the requirements of the regulations, although the system shows that the waste was eventually disposed of off-site at permitted treatment, storage, or disposal facilities."

EPA also recognized that the alleged violation occurred only from September 30, 1988 to February 16, 1989. Under these circumstances, if a violation did occur, it was purely a paperwork violation. Indeed, PEPCO was seeking to do more than required. All the wastes were managed properly physically, and properly disposed. There was no harm to the environment or potential for harm to the statutory or regulatory purposes or procedures for implementing the RCRA program since PEPCO's chain-of-custody process tracked each shipment of waste. No penalty should be assessed.

Count XI - In this Count, EPA seeks a penalty of $199,000 for PEPCO's alleged storage of hazardous waste without a permit or having interim status. The Complaint refers to seven shipments stored on-site without a permit or interim status for varying lengths of time during a 376-day period from December 29, 1988 to January 19, 1990. EPA states that it assessed a penalty for only the minimum 180-day period mandated by its penalty policy. That comes to $1,105.55 per day. As PEPCO explained specifically in its answers to ¶¶ 104, 105, and 106, the longest possible time period which wastes were stored on-site without a permit was 43 days. At the very least, PEPCO was operating as a transfer facility -- entitled to a ten day period to consolidate transferred containerized wastes, without a permit. For the longest time period involved, 43 days, that would be 33 days beyond the applicable ten day limit. Multiplying 33 days, times $1,105.55/day, comes to $36,483.15. Even that penalty is extraordinarily high given the very few drums of waste involved, and the fact that they were properly managed and properly disposed.

The other shipments identified in ¶ 104 were also just one or two drums each with the exception of manifest No. MDC0118273. This refers to 24 drums, which were stored on-site for only sixteen days. Storage was carefully managed, in a facility that would fully satisfy EPA's requirements for a storage facility.

It is important to recognize that PEPCO interpreted RCRA regulations as allowing it to store material designated as hazardous for 90 days or less without a permit or without having interim status. In a vigorous, good faith, and comprehensive effort to comply with all applicable laws and regulations relating to the handling of material designated as hazardous, PEPCO developed a comprehensive program to assure safe handling of the small amount of material designated as hazardous that PEPCO generates in connection with its statutory mandate to assure an adequate supply of electricity in the Washington metropolitan area. In order to ensure optimum quality control, PEPCO's hazardous waste management program includes centralized management of its storing and shipment of these materials. This centralized control involved the collection and consolidation of relatively small amounts of wastes from several PEPCO facilities at PEPCO's Benning facility for subsequent transportation to disposal facilities. PEPCO operated in this way until early in 1989 when DCRA informed PEPCO that it did not agree with PEPCO's interpretations of RCRA. This came as a surprise to PEPCO in light of DCRA's January 10, 1989 letter, following DCRA's December 1988 inspection of the same procedures and practices to which this count relates, which letter stated that "PEPCO stands in full compliance with the hazardous waste management regulations of the District of Columbia." Nevertheless, PEPCO changed its procedures to conform to DCRA's interpretation. PEPCO has

requested an informal conference with EPA at which PEPCO hopes that an agreement can be reached for an appropriate resolution of this count, as well as all other aspects of the Complaint.

V. STATEMENT OF FACTS WHICH CONSTITUTE THE GROUNDS OF DEFENSE

In § 5 of the Complaint, EPA offers respondent an opportunity to request a hearing, and as previously stated, respondent requests a hearing. In Part V, EPA also requests that PEPCO provide in the answer (1) a statement of the facts which constitutes the grounds of defense; and (2) a concise statement of the facts which respondent intends to place at issue in the hearing. Because of the complexity of the allegations, PEPCO has sought to provide the pertinent statement of facts in response to each paragraph of the Complaint in which PEPCO has disputed the facts, and thus placed them at issue for the hearing. In summary, PEPCO will show at the hearing that its comprehensive, voluntary program for chain-of-custody tracking of hazardous wastes, coupled with the inclusion of the LDR notification on shipments to ENSCO from Benning Road (with the exception of the two early shipments referred to in ¶ 59), satisfies all pertinent regulatory requirements. PEPCO specifically disputes the facts or allegations about shipments from Buzzard's Point, and will show that in fact, these shipments originated at its office building at 1900 Pennsylvania Avenue, known as the Thomas Edison Building. Finally, PEPCO will dispute the facts or allegations about the extent to which materials designated as hazardous were stored at Benning Road for more than ten days. PEPCO will show that two of the alleged shipments were in fact totally exempt from the regulatory requirements because they are eligible for the small quantity generator exemption. The others, evidencing at most an understandable difference of interpretation of complex regulations, which

caused no actual or potential harm to the environment, were corrected as soon as they were brought to PEPCO's attention.

VI. CONCLUSION

PEPCO is a company which has from the outset vigorously attempted to comply with all applicable environmental laws as they, and the many and complex changes in them, have been enacted. PEPCO's hazardous waste management program exceeds in every respect the stringent requirements of EPA, the District of Columbia, Maryland, and Virginia. The allegations in the Complaint are essentially, at most, paperwork violations, notwithstanding EPA's protest to the contrary in the press release that preceded issuance of the Complaint. PEPCO has always managed its hazardous wastes properly. The wastes are carefully and properly sealed in drums, they are carefully tracked by PEPCO, and they are properly disposed in accordance with law.

PEPCO has always worked closely with environmental regulatory authorities. Indeed, representatives of the District of Columbia have, at DCRA's request, participated in PEPCO's hazardous waste management training programs. PEPCO's hazardous waste management facilities and procedures have been frequently inspected. PEPCO was surprised to receive the highly technical notices of violation which underlie the Complaint as a result of an inspection in late 1989, because PEPCO had been informed, less than a year earlier, as a result of a previous inspection of the same facilities and practices, that it was in full compliance with applicable requirements.

To distill EPA's Complaint to its basic findings, EPA believes PEPCO has not fully carried out the regulations in only three areas and then only for limited periods of time in the past with no alleged harm to the environment at any time. First, land disposal restriction notifications were

not included with PEPCO's manifest for internal shipments of wastes from one PEPCO facility to another, prior to off-site disposal. Second, on two occasions, very early in the application of the LDR regulations, shipments of wastes from Benning Road to ENSCO, a fully permitted incineration facility in Arkansas, did not include the LDR notification. But ENSCO clearly knew what it was handling, and properly disposed of the material. Third, and finally, PEPCO held some drums of waste at its Benning Road facility beyond the ten day limit for a transfer facility, (but well within the 90 days that would otherwise be allowed if the wastes had been generated on-site). For all of these shipments, manifests were carefully filled out which fully identified the material, its source, and its destination. The materials were properly placed in sealed containers. All the material in them was properly disposed by incineration, or, in some instances, by resource recovery specifically encouraged by Congress. To the extent that PEPCO made some shipments internally without LDR notifications, this cannot possibly be of any regulatory significance. Indeed, it borders on absurdity that PEPCO should be fined $9,500 each for not notifying itself, in connection with internal shipments, of something it generated. All wastes subsequently shipped from PEPCO to Arkansas were in fact accompanied by the proper LDR notification. Internal waste shipments between PEPCO plants had all the necessary documentation for PEPCO, or for that matter, anyone else, to know what the materials were. Furthermore, when DCRA advised PEPCO of its different interpretation, PEPCO immediately changed its policies to conform to DCRA's interpretation.

For the foregoing reasons, PEPCO believes the proposed civil penalty for the alleged violations should be withdrawn.

Respectfully submitted,

William T. Torgerson, Esquire
Michael J. Boland, Esquire
Potomac Electric Power Company
Room 841
1900 Pennsylvania Avenue, N.W.
Washington, DC 20068
(202) 872-2520

Kenneth A. Rubin, Esquire
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, DC 20036
(202) 467-7140

Robert L. Collings, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 10103-6993
(215) 963-5503

Date: March 5, 1992

CERTIFICATE OF SERVICE

I hereby certify that the Answer of Potomac Electric Power Company was filed this day with the Regional Hearing Clerk and that a true and correct copy was hand delivered this day, to Brian Nishitani, Esquire (3RC31), U.S. Environmental Protection Agency, Region III, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Michael J. Boland
Counsel for
POTOMAC ELECTRIC POWER COMPANY

DATE: March 5, 1992

POTOMAC ELECTRIC POWER COMPANY

CLOSURE PLAN FOR
DRUM ACCUMULATION AREA

1. Location of Waste Management Unit to be Closed

The Waste Management Unit to be closed is a drum accumulation area located on a concrete pad within the Benning Generating Station property located at 3300 Benning Road, N.E., Washington, D.C.

2. Description of Benning Generating Station

The Generating Station consists of two oil fired steam electric generators, four substations, twelve warehouses, one general services shop, one maintenance garage and five office/shop complex buildings. The primary function of the Generating Station is the production and distribution of electricity. The Generating Station is approximately seventy acres in size and is completely fenced with 24 hour manned security.

3. Description of Waste Management Unit to be Closed

The Waste Management Unit to be closed is a drum accumulation area consisting of a 4' x 25.5' concrete floored section of the ramp leading into the PCB Containment Building. Within this area is a double shelved rack approximately 3' deep x 25.0' long x 10' high for accumulating containers. The base of the rack is completely surrounded by a continuous absorbent boom for secondary containment of any spills or leaks. The maximum number of drums that were in the accumulation area for the activities identified in EPA's Complaint, Compliance Order

and Notice of Opportunity for Hearing Docket No. RCRA-III-224 (Complaint) is 34. Upon closure, the area will be used to accumulate nonhazardous waste.

The Waste Management Unit is being closed pursuant to Compliance Order #5 of the EPA Complaint. The approval and implementation of the closure plan will not prohibit another area of the Benning Generating Station from continuing to serve as a transfer facility for hazardous waste generated within the PEPCO system. The Benning Facility will also continue to be a generator of hazardous waste. The Benning Facility does not require a permit since wastes generated on site are accumulated for less than 90 days. Transferred wastes will be accumulated within a concrete floored Containment Building for a period not to exceed 10 days.

4. Map of Generating Station

A map of the immediate surrounding areas is provided in Attachment I. The map shows the major buildings, fences, and access roads within the boundaries of the Benning Generating Station.

5. Detailed Drawing of Waste Management Unit to be Closed

The drawing identified as Attachment II provides a plan view of the Waste Management Unit to be closed, showing its dimensions and relationship to the Containment Building.

6. Waste Management Unit - Pavement Description

The base of the Waste Management Unit is a concrete floor. There are no cracks in the floor and there is no evidence of stains indicating spills or leaks while the unit was used to accumulate hazardous wastes. Additionally, the facility was

inspected weekly during the period it was used to accumulate hazardous waste, and there is no record of spills or leaks from drums.

7. List of Hazardous Waste

The waste streams covered in this closure plan are F001/F003/F004/F005 wastes as referenced at paragraph 104 of the EPA Complaint. The wastes consisted of contaminated rags from equipment maintenance and servicing and spent photo copying chemicals from PEPCO's main office building. The referenced wastes have all been sent to appropriate off-site disposal facilities. Certificates of Destruction for these wastes are available.

8. Schedule for Closure

Upon receipt and approval of the closure plan from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) it shall be implemented and completed within 90 days. Closure activities shall include sampling, decontamination if necessary, and certification of closure by PEPCO.

9. Air Emissions

It is not anticipated that the drum accumulation area closure activities will result in any air emissions to the ambient atmosphere.

10. Personnel Safety and Fire Prevention

There are no hazardous wastes (including ignitable wastes) currently being accumulated in the Waste Management Unit, thus, fire prevention will not be a problem at the facility.

In any event, the Benning facility maintains a comprehensive emergency response contingency plan which shall be followed if required. Personnel involved in decontamination activities shall be provided with the proper protective equipment such as gloves, respirators, etc. and shall follow OSHA standards for protection and safety.

11. Decontamination

As indicated in Section 5, weekly inspections did not reveal any evidence of spills or leaks of hazardous wastes during the time the wastes were being accumulated. It is therefore highly unlikely that any contamination of the area occurred.

Notwithstanding the above, the concrete surface shall be triple rinsed with an appropriate solvent and the storage rack wiped clean. Following triple rinsing and wiping, the wastes including the containment booms shall be managed as solid or hazardous wastes, as appropriate. In addition, verification TCLP sampling for organics will be performed on the concrete area.

12. Sampling and Removal

There is no exposed soil in the vicinity of the accumulation area. In addition, inspection records show no evidence of spills or leaks. Thus, no removal, sampling and analysis of soil will be performed.

13. Groundwater Monitoring, Leachate Collection and Runon/Runoff Control

As indicated in Section 12 there is no likelihood of soil contamination, thus no groundwater monitoring or leachate management is anticipated. Further, runon/runoff to the Waste

Management Unit is controlled by the containment boom referenced in Section 3.

14. Description of Equipment Cleaning

All equipment used in closure activities which require cleaning, shall be triple rinsed with an appropriate solvent to remove hazardous material. The residue will be appropriately managed as a solid or hazardous waste.

16. Certification

PEPCO shall provide certification to DCRA and EPA Region III of closure of the drum accumulation area along with that of an independent registered engineer. The certification shall be submitted within 30 days of closure and shall include the following information:

a. Volume of any waste removed.

b. Description of method of handling and transporting of waste.

c. Manifest numbers for off-site shipments of waste removed during closure.

d. Description of any sampling and analysis method used.

e. Chronology of closure activities and actual costs involved.

f. Photographic documentation of closure activities.

g. Tests performed, methods used, and results.

16. Status of Waste Management Unit After Closure

As indicated in Section 3, closure is being undertaken pursuant to an EPA Order and the drum accumulation area is the only Waste Management Unit at the Benning Generating Station. Closure activities shall be complete at the time of certification and the area will be used to accumulate nonhazardous waste.

17. Post-Closure Care

The Waste Management Unit was not a waste disposal area, and, because it will be clean closed, there is no need for post-closure care.

18. Estimated Closure Costs

The closure costs information is presented in Attachment III. An estimated $5,000 will be required to clean close the Waste Management Unit. The closure costs include labor, disposal costs, sampling and analysis, and independent closure certification.

19. Certification

I certify under penalty of law that this document and all exhibits thereof were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is to the best of my knowledge, true, accurate and complete. I am aware that

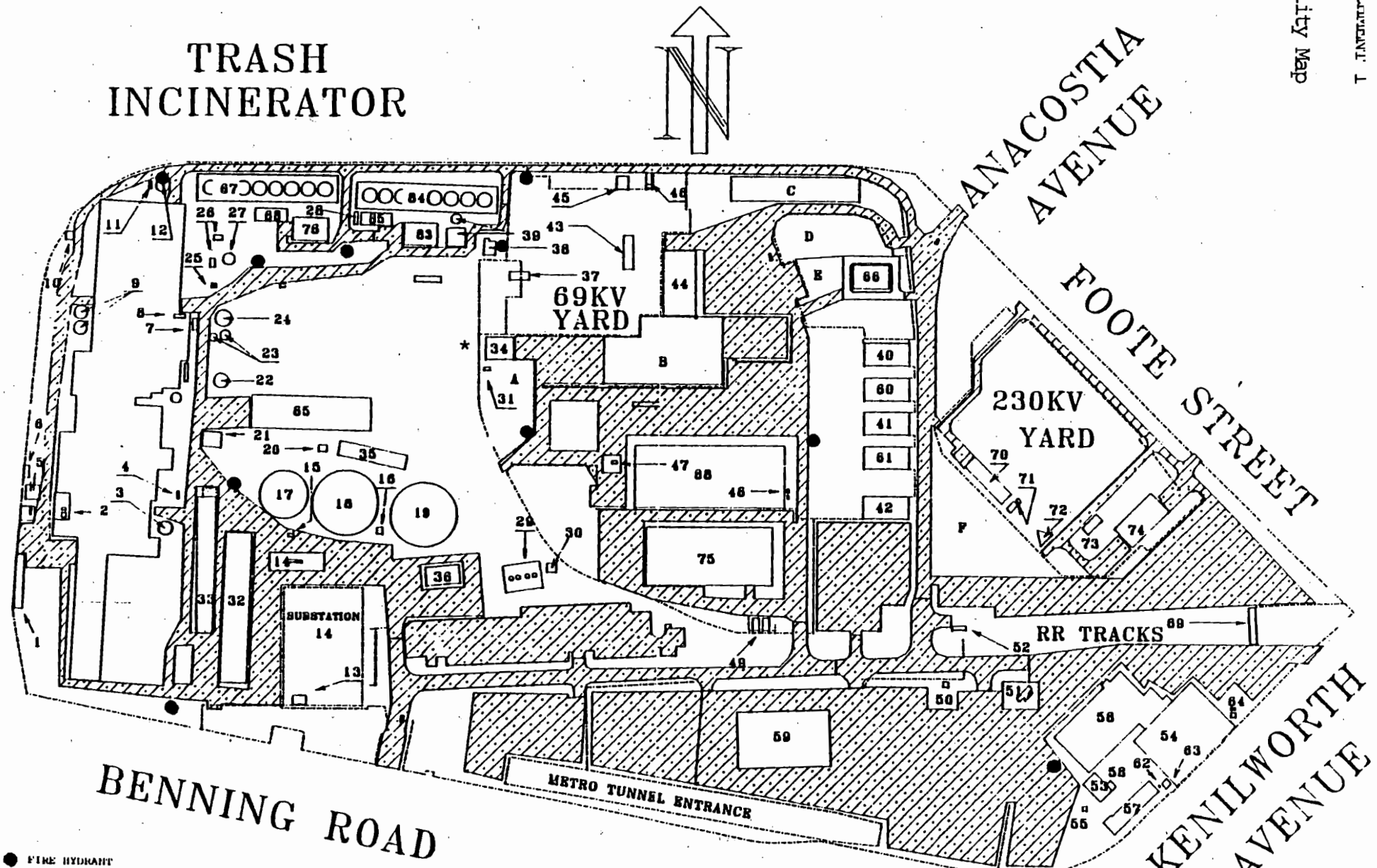
there are significant penalties for submitting false information, including fine, and imprisonment for knowing violations.

BY: Charles W Nicolson

Charles W. Nicolson
Vice President, Environment and Generating Services

DATE: March 4, 1992

Facility Map

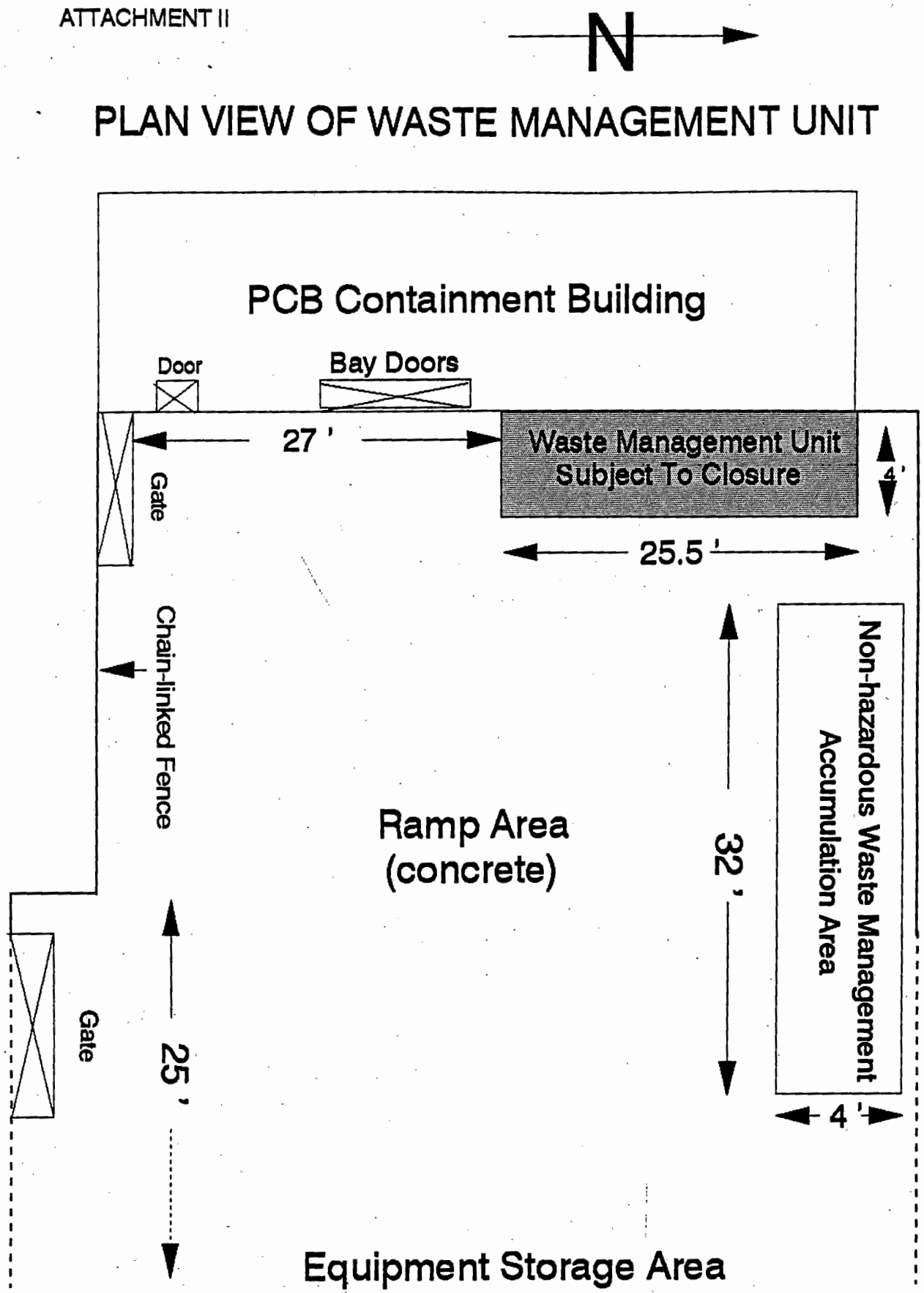


● FIRE HYDRANT

*Building 34 - Hazardous Waste (RCRA) PCB Containment Building and Non- Hazardous Waste Storage Area

ATTACHMENT II

PLAN VIEW OF WASTE MANAGEMENT UNIT



ATTACHMENT III

Estimated Closure Costs
($)

DISPOSAL	$	1600
LABOR		497
CERTIFICATION		300
SAMPLING		500
LAB ANALYSIS		1270
SUBTOTAL	$	4167
20% CONTINGENCY	$	833
TOTAL	$	5000